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## The Grand Experiment in Regulatory Reporting

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## **Executive Summary**

This paper evaluates a grand regulatory experiment—the first of its kind in the world—aimed at providing an objective and comprehensive characterization of the costs and benefits of U.S. federal regulation as well as identifying opportunities for reform. This experiment, if successful, could have important implications for reviewing the impact of regulation across the world. Five government reports on the costs and benefits of regulation are now complete. We offer a critical evaluation of these reports, using an approach that scores the reports on various dimensions.

By and large, the reports represent a significant step forward in providing insights into the regulatory process and in providing information on the costs and benefits of regulation. But they also illustrate the shortcomings of having a government agency do the analysis.

We recommend that the Office of Management and Budget require agencies to issue a scorecard evaluating each agency regulation; that OMB summarize the strengths and weaknesses of regulations using this scorecard; that OMB include not only executive agencies, but also independent agencies in its analysis; and that Congress create an agency or office outside of the executive branch to perform a regulatory evaluation function similar to that of OMB. While we are highly critical of some aspects of these important reports, we are guardedly optimistic about their potential to improve regulation and the regulatory process.

# The Grand Experiment in Regulatory Reporting

Robert W. Hahn and Mary Beth Muething

## I. Introduction

The United States is arguably the world's leader in doing cost-benefit analyses of important regulations.<sup>1</sup> Yet, there are still some problems with the way cost-benefit analyses are done by the government.<sup>2</sup>

In 1995, Congress passed a law aimed at having the government assess the economic impact of federal regulation. The substantive requirement imposed by this law could have important implications for gaining insight into the workings of the federal regulatory process as well as the impact of federal regulation.<sup>3</sup> For the first time in history, a government agency was asked to produce a report tallying the overall costs and benefits of regulations issued by several different federal agencies. The U.S. Office of Management and Budget (OMB), which has primary responsibility for regulatory oversight, was asked to produce the report. The reports address several key issues, including the costs and benefits of federal regulation, the impact of federal regulation on local governments, and ways to improve federal regulation.

This legal innovation was important because regulation plays an increasingly important role in the U.S. economy and the world economy. However, a significant shortcoming of the Congressional mandate that requires OMB to report on the costs and benefits of federal regulation is

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<sup>1</sup> John F. Morrall, *Ebbs and Flows in the Quality of Regulatory Analysis*, Weidenbaum Center Forum "Executive Regulatory Review: Surveying the Record Making it Work", at 9 (Dec. 17, 2001). "We were the first to have such requirements by ten years and remain the world leader in using RIAs to inform regulatory decision-making."

<sup>2</sup> See CASS R. SUNSTEIN, *RISK AND REASON* (2003); See also ROBERT W. HAHN, *REVIVING REGULATORY REFORM: A GLOBAL PERSPECTIVE*, Chapter 3, Washington, D.C.: AEI-Brookings Joint Center for Regulatory Studies (2001), available at <http://www.aei.brookings.edu/publications/books/rrr.pdf>.

<sup>3</sup> Treasury, Postal Services and General Government Appropriations Act, 1997 (P.L. 104-208). See section 645 (a).

that it does not apply to independent agencies.<sup>4</sup> Exactly how large a role regulation plays in the U.S. and world economies is difficult to say, but many scholars believe it has a substantial impact.<sup>5</sup> For example, expenditures on federal health, safety and environmental regulation are estimated to be on the order of \$200 billion annually or about 2% of GDP.<sup>6</sup> In its 2002 report to Congress on the costs and benefits of federal regulation, OMB notes that the total costs of major rules issued between April, 1995 and September, 2001 are estimated to be between \$50 and \$53 billion annually.<sup>7</sup> The same report estimates that benefits range from \$48 to \$102 billion annually.<sup>8</sup> The report, however, does not provide aggregate best estimates to determine whether the likely sum of benefits of all regulations during this period exceeds the sum of the costs.<sup>9</sup>

Earlier OMB reports suggested that the benefits of regulation could be substantial. For example, in its 2000 cost-benefit report, OMB cites an EPA estimate of \$96 billion for the benefits of the Clean Air Act. Two years earlier, EPA had estimated the benefits of the Clean Air Act to be between \$56 billion and \$1.5 trillion.<sup>10</sup>

Critics of the OMB report felt that the report would be used simply to highlight the costs of regulation and understate the benefits because benefits are sometimes harder to quantify than costs.

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<sup>4</sup> In its 2002 report, OMB notes that it “does not review regulations of the independent agencies or any regulations that are not determined to be ‘significant’ under the E.O. 12866 definition.” OMB 2002, *supra* note 6, at 38.

<sup>5</sup> See, e.g., Thomas D. Hopkins, “Profiles of Regulatory Costs”, U.S. Small Business Administration, Washington, Nov. 1995, available at <http://www.sba.gov/ADVO/research/>.

<sup>6</sup> The draft of OMB’s 2002 report on the costs and benefits of regulation estimated the aggregate cost of federal health, safety, and environment (social) regulation to be between \$181 and \$277 billion (2001 dollars). See Table 11 of Draft Report to Congress on the Costs and Benefits of Federal Regulations, 67 *Federal Register* at 15037, March 28, 2002. 2001 GDP was estimated by BEA as \$10.2 trillion (2001 dollars). See Bureau of Economic Analysis, National Accounts Data: Current-dollar and “real” GDP, available at <http://www.bea.gov/bea/dn1.htm> (last visited July 23, 2002). 2001 figures (in current dollars) for Medicare spending (\$214 billion) and corporate income tax receipts (\$192 billion) are from OMB, The Budget for FY 2003, Historical Tables, Table 8.5, at 132; Table 14.1, at 286, available at <http://www.whitehouse.gov/omb/budget/fy2003/pdf/hist.pdf>.

<sup>7</sup> See *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, Office of Management and Budget, Table 8, at 39 (2002).

<sup>8</sup> See OMB 2002 Report to Congress, *supra* note 7, at 39.

<sup>9</sup> This is a point we discuss later in Section 3, *Evaluation*, p. 10.

Proponents of the report saw it as a way of providing greater regulatory transparency and accountability.<sup>11</sup> In particular, supporters of policy analysis and greater regulatory accountability felt that there was a need to provide more systematic and timely information on the overall costs and benefits of federal regulation.<sup>12</sup>

In response to regular Congressional mandates, OMB has produced five reports on the costs and benefits of federal regulation. In this paper, we provide the first comprehensive evaluation of these reports using objective measures.<sup>13</sup> The paper has two objectives: first, to provide a “scorecard” for how well the OMB report has met Congressional objectives over the past six years; and second, to recommend ways that the government can produce better information on the benefits and costs of regulation.

Section II of the report provides a brief history of the legislation and the legislative mandates. Section III evaluates the five reports using a variety of objective measures. Section IV offers recommendations for improving the federal report on the costs and benefits of regulation and refining the quality of regulatory information. Section V briefly concludes.

## **II. Background on Reporting of the Costs and Benefits of Regulation**

Before the requirement for a government report on federal regulatory costs and benefits, little work had been done in this area. The work that was done tended to focus on the impact of the stock of existing regulation, as opposed the flow of new regulations that is added each year. Early

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<sup>10</sup> Costs of the Clean Air Act were estimated at \$20 billion in EPA’s 1999 report and between \$84 and \$140 billion in 1997. See OMB 2000 Report to Congress, at 19-22. For a critique of the particulate matter benefits, see Randall Lutter and Richard B. Belzer. “EPA Pats Itself on the Back.” 23:3 Regulation, at 23 (2000).

<sup>11</sup> See Robert W. Hahn and Robert E. Litan, *Improving Regulatory Accountability*, Washington, DC: American Enterprise Institute and The Brookings Institution (1997), available at [http://www.aei.brookings.org/publications/books/improving\\_reg\\_accountability.pdf](http://www.aei.brookings.org/publications/books/improving_reg_accountability.pdf).

<sup>12</sup> See Kenneth Arrow et al., *Benefit-Cost Analysis in Environmental, Health, and Safety Regulation: A Statement of Principles*, Washington, DC: American Enterprise Institute, The Annapolis Center, Resources for the Future (1996), available at [http://www.aei.brookings.org/publications/books/benefit\\_cost\\_analysis.pdf](http://www.aei.brookings.org/publications/books/benefit_cost_analysis.pdf).

<sup>13</sup> There have been several evaluations of specific reports as well as the process, but no evaluation that takes a careful look at how the reports have evolved over time. See, e.g., GAO report and Hahn and Litan.

work by Weidenbaum and DeFina, and Litan and Nordhaus estimated the costs of federal regulation.<sup>14</sup> Subsequent work by Hahn and Hird estimated the costs and benefits of federal regulation.<sup>15</sup> More recently, Hopkins focused on estimating the costs of regulation over time, including costs associated with paperwork.<sup>16</sup> Winston provided some useful estimates of the economic impact of regulation and deregulation in the U.S.<sup>17</sup> With one exception—work by the Center for the Study of American Business under the leadership of Murray Weidenbaum—none of this research provided annual updates. Moreover, the work by the Center for the Study of American Business was fairly narrow in scope, focusing on the administrative costs associated with federal regulatory agencies.<sup>18 19</sup>

Congress sought to fill this gap in knowledge by requiring that OMB produce a report on the impact of regulation. The requirements for the report are summarized in Table 1. In an appropriations bill, Congress requested each of the five annual reports issued by OMB since 1997.<sup>20</sup> Two other pieces of legislation direct OMB to report on regulation, and OMB has fulfilled these

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<sup>14</sup> See Murray L. Weidenbaum and Robert DeFina, *The Cost of Federal Regulation of Economic Activity*, Washington D.C.: American Enterprise Institute (1978).; and Robert E. Litan & William D. Nordhaus, *Reforming Federal Regulation*, New Haven, Ct.: Yale University Press (1983).

<sup>15</sup> See Robert W. Hahn and John A. Hird, *The Costs and Benefits of Regulation: Review and Synthesis*, 8 YALE J. ON REG. 1 (Winter 1991).

<sup>16</sup> See, for example, Hopkins, Thomas D. “Profiles of Regulatory Costs,” Report to U.S. Small Business Administration, (November 1995).

<sup>17</sup> See Robert W. Hahn, *Government Analysis of the Benefits and Costs of Regulation*,. 12 J. ECON. PERSP. 4, 201-210 (Fall 1998). For a discussion of the impact of regulation and deregulation outside the U.S., see, e.g. Luis Guasch & Robert W. Hahn, *The Costs and Benefits of Regulation: Implications for Developing Countries*, 14 The World Bank Research Observer 1, 137-158 (Feb. 1999).

<sup>18</sup> Annual estimates of the impacts of federal regulation were provided by the Center for Study of American Business, but these focused on the administrative costs associated with regulation and the number of federal personnel in regulatory agencies. See e.g., Center for Study of American Business, at <http://csab.wustl.edu/csabarchive.html>.

<sup>19</sup> See Guasch and Hahn, *supra* note 17.

<sup>20</sup> Although it did not publish a final report in 1998, OMB has fulfilled Congress’ reporting requirement for five of the past six years. OMB issued the first report at the end of 1997, the same year that the report was mandated. OMB issued the second report with Congress’ direction in the Treasury and General Government Appropriations Act of 1998 (§ 625, P.L. 105-61). The final report was not published, however, until January of 1999. Subsequent reports were also published one year after the Congressional acts that asked for them were passed.



directives in the annual reports.<sup>21</sup> Each year, Congress has asked for the same core components: estimates of the costs and benefits of federal regulation; an assessment of the impact of federal regulation on state and local government; and recommendations for ways to improve federal regulation.<sup>22</sup> The first two appropriations acts that directed the OMB to produce the cost-benefit report specified that the report should suggest ways to “reform or eliminate any Federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the Nation's resources.”<sup>23</sup> Subsequent Congressional mandates were more general and did not explicitly ask OMB to identify regulatory *programs* when making reform suggestions.<sup>24</sup>

### III. Evaluation

The basic approach we use to evaluate the five reports is to “score” the reports on various dimensions. The advantage of such scoring is that it is reasonably objective. The disadvantage is that scoring cannot easily address some fundamental issues, such as the quality of a particular economic analysis.<sup>25</sup>

In scoring the OMB reports, we are evaluating OMB’s assessment of the information in the Regulatory Impact Analyses (RIAs) that are performed for each major federal regulation by the agency that issues the regulation. Much of the information that makes up the OMB report comes from different federal agencies. The amount and quality of the information on overall costs and

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<sup>21</sup> The Unfunded Mandates Reform Act (P.L. 104-4), passed in 1995, requires OMB to report on the impact of federal regulation on state and local governments and small businesses. The Consolidated Appropriations Act of 2001 (P.L. 106-554, section 624) requires OMB to produce its cost-benefit report on an annual basis.

<sup>22</sup> OMB is required by law to publish a draft copy of its yearly report on Costs and Benefits of Federal Regulation, and to solicit comments from the public on its draft report before publishing the final report. OMB is also required to go through a peer-review process before publishing its final report each year.

<sup>23</sup> See Treasury and General Government Appropriations Act of 1998, (§ 625, P.L. 105-61).

<sup>24</sup> A regulatory program is broader than a specific regulation and may include several regulations that have related purposes or are mandated by the same law. An example of a regulatory program is the Superfund program.

<sup>25</sup> Some aspects of quality can be addressed. For example, if an analysis did not systematically consider alternatives, this could suggest that it is lacking in an important dimension. In fact, many regulatory impact analyses do not systematically consider alternatives. See generally Hahn et al., *Assessing Regulatory Impact Analyses: The Failure of Agencies to Comply with Executive Order 12, 866*. 23 HARV. J.L. & PUB. POL’Y 1, 874-876 (Summer 2000).

benefits that OMB is able to report is influenced by the quality of the analyses submitted by the agencies.

We examine a number of issues related to net benefits, costs, benefits, coverage of agencies, and recommendations by OMB. Table 2 reports information on costs and benefits. In scoring the reports, we have noted whether the report met certain criteria related to the reporting of costs and benefits. Several of the rows in the table note whether OMB made basic facts about an agency's analysis available to the reader. For example, the table shows that in three of the five years, the OMB report revealed how many rules provided no information on costs or benefits. In two of the five years, OMB did not indicate the number of rules failing to quantify costs and benefits.<sup>26</sup>

Table 2 includes information on agencies' analyses of non-transfer rules and OMB's reporting on those analyses. Transfer rules are generally designed to transfer wealth from one party to another, and, therefore, typically have impacts on net economic welfare that are small compared with the reallocation of resources.<sup>27</sup> Executive Order 12866, which requires agencies to analyze the economic effects of proposed rules that are economically significant, does not exempt transfer rules from the reporting requirement.<sup>28</sup> Agencies, however, almost never produce regulatory impact analyses for transfer rules.<sup>29</sup> Since agencies do not submit estimates of the costs and benefits of transfer rules to OMB, we do not consider OMB's treatment of transfer rules when we consider the quality of OMB's report on the costs and benefits of regulation.

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<sup>26</sup> All of the reports include a table with cost and benefit information on the new rules for the year in which the report was issued. The tables are lengthy and include blocks of text from agency analyses. Information which could be obtained from the reports only by reading through these tables and counting rules that met certain criteria (e.g. monetized some costs) was not considered readily available for our purposes in constructing Table 2.

<sup>27</sup> "Transfer payments are not social costs but rather are payments that reflect a redistribution of wealth." OMB 1997 Report to Congress, Chapter I, §3.

<sup>28</sup> In its 1996 guidelines for federal agencies, OMB describes the economic analyses agencies should conduct for "economically 'significant' rules (as defined in Section 3(f)(1) of the Executive Order)." Office of Management and Budget. Economic Analysis of Federal Regulations Under Executive Order 12866. January 11, 1996, available at <http://www.whitehouse.gov/omb/inforeg/riaguide.html>. Information on the benefits and costs of economically significant rules is typically contained in the Regulatory Impact Analysis prepared for that rule.

The reports provide some discussion of the costs and benefits of individual new, economically significant regulations. Executive Order 12866 requires agencies to assess the costs and benefits of rules that are economically significant and defines a “significant regulatory action” as a rule “that is likely to have an annual effect on the economy of \$100 million or more.”<sup>30</sup> There are several points worth noting. First, a majority of Regulatory Impact Analyses for new rules examined in the past four reports quantifies some measure of costs and benefits. Second, in the past four reports, benefits are monetized less frequently than costs. Third, a small number of rules quantify neither costs nor benefits. In 1997, 5 of 21 rules fell into this category. In 2002, three rules fail to quantify costs or benefits, compared to two rules in 2001.

Fourth, the numbers that OMB does provide cannot be easily compared across the different yearly reports.<sup>31</sup> OMB states that “agencies monetized all the benefit estimates that they were able to quantify in *eight* cases” and that “in *five* cases, agencies provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important components of benefits.” Finally, “in *three* cases, agencies provided quantified but not monetized benefit estimates.”<sup>32</sup> Fifth, the fraction of new rules reporting monetized estimates for both some costs and some benefits is below 50% in three of the four years for which information is provided.<sup>33</sup>

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<sup>29</sup> The lack of regulatory impact analyses for transfer rules from the RIA reporting requirement was verified through email correspondence with OMB staff, July 26, 2002.

<sup>30</sup> Executive Order 12866 also defines a significant regulatory action as one which will: adversely affect the economy, public health, or safety; create a serious inconsistency or interfere with actions taken by another agency; or materially alter the budgetary impact of entitlements, grants, user fees or loan programs. For an exact definition of “significant regulatory action,” see Executive Order 12866, § 3(f)(1).

<sup>31</sup> In the 1998 report, for example, OMB does not clearly state that 16 of the 22 new rules in that report quantify benefits. The reader needs to find and tally several numbers that OMB does provide to find this piece of information.

<sup>32</sup> OMB 1997 Report to Congress, Chapter II, §A.1: “benefits analysis.”

<sup>33</sup> This pattern is generally consistent with findings in Robert W. Hahn et al., *Assessing Regulatory Impact Analyses: The Failure of Agencies to Comply with Executive Order 12,866*, 23 HARV. J. L. & PUB. POL’Y 1, 859 (Summer 2000). See figures one and two, at 867 and 869, respectively, which report the frequency with which agencies monetize costs and benefits.

A valuable part of the OMB's second, third, and fifth yearly reports is a set of tables in which OMB reports standardize yearly costs and benefits by agency.<sup>34</sup> OMB monetizes the agencies' quantified estimates when it is able to, and converts the estimates to a standardized dollar year so that comparisons can be made across agencies and years.<sup>35</sup> The 2002 report states that in "assembling estimates of benefits and costs...OIRA has monetized quantitative estimates where the agency has not done so".<sup>36</sup> The examples discussed in the text deal with benefits. Table 19, however, gives some assumptions that OMB had to make to calculate annualized cost figures for some rules. We do not feel the estimates reported by OMB in these tables are either standardized or comprehensive enough to be used in reliably assessing net benefits. While OMB does monetize some benefits that the agencies have only quantified, these tables take agency numbers as given when an agency has provided a monetized estimate, even though different agencies may use different assumptions to monetize costs and benefits.<sup>37</sup> OMB notes that "to the extent that agencies have adopted different monetized values for effects—for example, different values for a statistical life or different discounting methods—these differences remain embedded in the tables."<sup>38</sup> Finally,

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<sup>34</sup> OMB monetizes agency estimates by assigning a monetary value to benefits that the agency has not. For example, "for the OSHA safety standards for steel erection, OIRA monetized injury benefits using a value of \$50,000 per injury averted." OMB 2002, *supra* note 6, at 112. OMB also annualizes the agencies' cost and benefit estimates.

<sup>35</sup> For example, see Tables 13–16 in the 1998 Report, Tables 11–15 in the 2000 report, and Tables 7 and 8 in the 2002 report.

<sup>36</sup> OMB 2002 Report to Congress, *supra* note 6, at 108. This is also stated in the 1998 and 2000 reports.

<sup>37</sup> See 1998 report, Chapter III, Section I: "Estimates for the value of a statistical life varied across agencies. For the tobacco rule, FDA estimated benefits based on a value of \$2.5 million per statistical life. For the roadway worker rule, FRA used \$2.7 million per statistical life. For the upper-bound estimates of EPA's ozone and PM NAAQS rules, the agency used \$4.8 million per statistical life; and for its mammography rule, FDA also used \$5 million per statistical life. Similarly, agency estimates for the value of a statistical life-year have also varied...As a general matter, we have deferred to the individual agencies' judgment in this area. In cases where the agency both quantified and monetized fatality risks, we have made no adjustments to the agency's estimate. In cases where the agency provided only a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates in order to convert these effects into a common unit."

<sup>38</sup> See OMB 2002 Report to Congress, *supra* note 7, at 115.

the tables omit any valuation of benefits that the agencies did not quantify.<sup>39</sup> Any cross-year or cross-agency comparison that the tables do allow one to make is still incomplete.<sup>40</sup>

The executive order that requires agencies to provide OMB with cost-benefit analyses for new economically significant regulations does not apply to independent agencies.<sup>41</sup> Consequently, the OMB report has included very little information on the costs and benefits of regulations issued by independent agencies. In the four most recent reports, OMB has presented a table that reports how infrequently the independent agencies provided any cost or benefit information.<sup>42</sup>

In the past three reports, OMB has also provided a table summarizing information collection costs that result from federal regulation. The table breaks down costs imposed by executive and independent agencies. These costs are significant in some cases, but they do not include many critical costs of regulation, such as impacts on firm's production processes and effects on consumers unrelated to paperwork.

Table 3 reviews OMB's reporting practices on the net benefits of new rules.<sup>43</sup> In each year, of the new non-transfer rules considered, less than half would unambiguously pass a cost-benefit test. At the same time, only a small fraction would unambiguously fail a cost-benefit test. By inference, most rules either do not provide enough information to compare costs and benefits, or

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<sup>39</sup> See 2000 report, Chapter IV, section I: "We have not, however, attempted to quantify or monetize any qualitative effects identified by agencies where the agency did not at least quantify them;" and 2002 report, Chapter II, Section A: "Table 8 contains an estimate of the total costs and benefits of all regulations reviewed by OMB over this period that met two conditions. Each rule generated costs or benefits of at least \$100 million annually and its costs and benefits were quantified and monetized by the agency or, in some cases, by OMB. The estimates are therefore not a complete accounting of all the costs and benefits of all regulations issued by the Federal government during this period."

<sup>40</sup> This is a generic problem and the criticism can be applied to many works that attempt to estimate comprehensive and aggregated costs or benefits. See ROBERT W. HAHN. *RISKS, COSTS, AND LIVES SAVED: GETTING BETTER RESULTS FROM REGULATION*. (1996).

<sup>41</sup> Executive Order 12866 requires federal agencies to conduct cost-benefit analyses when issuing new regulations, and describes criteria the analyses should meet. For the provision of the executive order exempting independent regulatory agencies, see Exec. Order No. 12,866, 3 C.F.R. 638 (1994).

<sup>42</sup> In the 2001 OMB report, for example, out of ten rules issued by independent agencies, one rule monetized benefits. None monetized costs. See OMB 2001 Report to Congress, Table 5. In the 2002 report, 6 of 19 rules from the independent agencies monetized costs; 3 rules monetized benefits. See OMB 2002 Report to Congress, Table 11, at 61-62.

there is a large enough range of uncertainty in the agencies' estimates to put the regulations in a gray area, where they neither unambiguously pass nor fail. For example, in OMB's 2002 report we calculate that net benefits were not obviously positive or negative for 23 of 34 new rules.<sup>44</sup> While it may be sensible to use ranges when estimating costs and benefits to reflect uncertainty, it is difficult to interpret ranges. First, the agencies rarely provide information about their degree of confidence that the actual value of benefits or costs falls within the range. Second, when estimated ranges of costs and benefits produce a net benefit estimate that ranges from negative to positive, it is unclear whether a regulation is likely to pass or fail a cost benefit test.<sup>45</sup>

The number of rules passing or failing a cost-benefit test could indicate the effectiveness of the OMB oversight process, although there are clearly other important factors, since the flow of rules is not random and is determined by forces outside of OMB's control—most notably Congress. The number of rules unambiguously passing a cost-benefit test does not show any obvious pattern for new rules over the past five reports.<sup>46,47</sup>

Information on aggregate net benefits is summarized in Table 4. The 2002 report is the first *not* to include any information on aggregate net benefits of new rules.<sup>48</sup> Aggregate net benefits can

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<sup>43</sup> As in Table 2, we consider only non-transfer rules.

<sup>44</sup> See OMB 2002 Report to Congress, *supra* note 7, Table 9, at 50-57.

<sup>45</sup> If agencies use ranges and are concerned about making the case that a rule passes a cost-benefit test under certain conditions, it is a simple matter to extend the ranges to ensure that this will be the case.

<sup>46</sup> For analyses of the effectiveness of OMB, see ROBERT W. HAHN, *REVIVING REGULATORY REFORM* (2000). Eric A. Posner, *Controlling Agencies with Cost-Benefit Analysis: A Positive Political Theory Perspective*, Related Publication, AEI-Brookings Joint Center for Regulatory Studies (Apr. 2001); Scott Farrow, *Improving Regulatory Performance: Does Executive Office Oversight Matter?* Related Publication, AEI-Brookings Joint Center for Regulatory Studies (Dec., 2001), available at <http://www.aei.brookings.org/publications/related/oversight.pdf>; W. Kip Viscusi, *Economic Foundations of the Current Regulatory Reform Efforts*, 10 (3) J. ECON. PERSP. (1996), at 119-134.

<sup>47</sup> It would be informative to observe the fraction of rules that unambiguously pass a cost-benefit test out of the rules that monetize nearly all benefits and costs. There is not enough information in the OMB reports to extract this statistic. First, not all of the rules that have benefits unambiguously exceeding their costs by OMB's criteria monetize nearly *all* benefits and costs. Second, it is not apparent from the OMB reports how many rules monetize all or nearly all benefits and costs—only how many rules monetize both some costs and some benefits.

<sup>48</sup> Table 8 of the 2002 report sums costs of rules issued since 1995, but does not attempt to aggregate total costs or benefits of federal regulation. See OMB 2002 Report to Congress, Chapter II, part A: “in keeping with the spirit of OMB's new information-quality guidelines, we have decided not to reproduce the aggregate estimates that were contained in Appendix C of the draft report.”

provide useful information on whether a particular set of regulations or programs are enhancing economic welfare at a particular point in time or over a time period. However, as several authors and OMB have pointed out, there can be problems with adding up the benefits and costs of regulation across different studies because of differences in assumptions and baselines.<sup>49</sup>

In the past two years, OMB has also discontinued the practice of forecasting aggregate net benefits over time. OMB's 1998 and 2000 reports included tables that forecasted the costs and benefits of federal regulations in the years 2005, 2010, and 2015. In both its 1998 and 2000 reports, OMB forecasted and summed future costs for individual regulations in a summary table.<sup>50</sup>

Sometimes, aggregate benefits can be disaggregated to provide more informative estimates. For example, it may not make sense to combine the net benefits of airline deregulation with the net benefits of safety regulation, but it might be reasonable to determine whether EPA's Superfund program's benefits are likely to exceed its costs. Generally, OMB has not provided much useful information on the benefits and costs of specific programs.<sup>51</sup> In the 2002 report, however, it did begin to provide some data on benefits and costs by agency, information that could be useful for comparing net benefits of regulations across agencies.<sup>52</sup>

Table 5 provides additional information contained in the reports. OMB has generally been slow to suggest specific reforms. So far, it has not identified any regulatory *programs* for

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<sup>49</sup> For a succinct description of what OMB describes as the "apples and oranges problem," that is, the problem with "[simply adding] together a diverse set of individual studies," see OMB 1998 Report to Congress, at 10. See also Robert W. Hahn and John A. Hird, *The Costs and Benefits of Regulation: Review and Synthesis*, 8 YALE J. ON REG. 1 (Winter 1991). See also *Regulatory Reform: Agencies Could Improve Development, Documentation, and Clarity of Regulatory Economic Analyses*, United States General Accounting Office (May 1998), available at <http://www.gao.gov/archive/1998/rc98142.pdf>.

<sup>50</sup> See OMB 1998 Report to Congress, Tables 13-16; and OMB 2000 Report to Congress, Tables 11-15.

<sup>51</sup> OMB has broken down its aggregate estimates for social regulation into sub-categories, but not into specific regulatory programs that encompass more than one regulation, such as the Superfund program. In 1997, costs and benefits for environmental regulations were reported separately. See OMB 1997 Report to Congress, Table 4. In subsequent years, cost-benefit estimates are presented separately for four categories of social regulations: environmental, labor, transportation, and other. See Tables 1-3 in 1998 report, Tables 1 and 2 in the 2000 report, Tables 1 and 2 in the 2001 report, and Table 11 in the 2002 draft report.

<sup>52</sup> See OMB 2002, Report to Congress, *supra* note 6, Table 8, at 39.

elimination or improvement.<sup>53</sup> In the 2001 report, however, OMB endorsed specific suggestions from the public about reforming, and in some cases eliminating, individual regulations.<sup>54</sup> This year, OMB's report included information on the status of efforts to improve the regulations that were identified as high priority reform opportunities in the 2001 report.<sup>55</sup> OMB has taken further measures to improve federal regulation by encouraging agencies to examine the impact of new, economically significant regulations. The 2002 final report states that "in response to our request for regulatory reform proposals, we received suggestions on 316 unique regulations and guidance documents covering 26 Federal agencies," and that OMB has made the decision to change the way it evaluated reform suggestions from an OMB-initiated process to an agency-initiated process.<sup>56</sup> In September of 2001, OMB introduced the "prompt letter," which encourages agencies to issue specific regulations whose benefits exceed costs.<sup>57</sup>

As shown in Table 5, the past three reports discuss the impacts of federal regulation on state, local, and tribal governments, and small business. Each of these reports has identified and discussed the rules that cost State, local and tribal governments more than \$100 million annually, a threshold set by the Unfunded Mandates Reform Act. The past three reports have also included separate sections that discuss the impact of federal regulation on wages, small businesses, and economic growth.

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<sup>53</sup> In the first two years in which Congress asked OMB to produce the cost-benefit report, they specifically asked for reform suggestions that focused on regulatory *programs*. In the subsequent three years, Congress asked for more general reform suggestions. See text of legislation, *supra* Table 1.

<sup>54</sup> In the 2001 report, OMB identified 23 of 71 of the public's suggested reforms as "high priority." See OMB 2001 Report to Congress, Table 7, at 63. High priority is defined to mean that "[OMB is] inclined to agree and look into the suggestion." OMB 2001 Report to Congress, at 62.

<sup>55</sup> OMB appears to have enjoyed some success in using suggestions from others to identify regulations for improvement or elimination. It should extend this idea to regulatory programs and make suggestions for improvement or elimination of specific regulatory programs.

<sup>56</sup> See OMB 2002 Report to Congress on the Costs and Benefits of Federal Regulation, Chapter IV.

<sup>57</sup> For example, see OMB's prompt letter on trans fatty acids, Sept. 18, 2001, available at [http://www.whitehouse.gov/omb/pubpress/hhs\\_prompt\\_letter.html](http://www.whitehouse.gov/omb/pubpress/hhs_prompt_letter.html).



The past two reports provide an executive summary of the main findings. All of the reports address the issue of information collection costs, such as those associated with additional paperwork. The past three provide numerical estimates of the number of hours spent on information collection by executive and independent agencies. All five reports provide dollar estimates of paperwork costs, though not every report estimates total, government-wide paperwork costs.<sup>58</sup>

The picture that emerges from these reports is intriguing. OMB is focusing less on aggregate estimates of the impacts of regulatory activity and more on improving the process and particular regulations. OMB has not used its own in-house expertise to render judgments on the quality of regulatory analysis given to it by the agencies. It is, however, taking greater advantage of suggestions from interested parties to identify regulations that are in need of reform or elimination. It is also actively searching to help identify new regulations whose net benefits are likely to be substantial, and using prompt letters to alert agencies to new regulatory opportunities. Finally, changes in OMB's use of the return letter suggest that OMB may be assessing and making changes to its oversight role. OMB's use of the return letter is authorized in Executive Order 12866, which states that when OMB denies approval of a regulation that an agency has submitted, it must also send a letter explaining why the regulation was not approved.<sup>59</sup> OMB may send a return letter to explain a problem it has with a draft rule or with a draft analysis of the rule's impact. OMB issued

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<sup>58</sup> In the 2000, 2001 reports and 2002 draft report, OMB monetizes hours spent on information collection to calculate a cost of public paperwork. See OMB 2000 Report to Congress, at 30: "\$190 billion". See 2001 Report to Congress, at 14: \$195 billion. See 2002 Draft Report to Congress, at 113: \$230 billion. OMB monetizes hours spent on information collection costs in the calculation of disclosure costs in its 1998 report, at 21: \$7 billion. The 1997 report uses information collection estimates to monetize the cost of information collection imposed by independent agencies and the paperwork costs imposed by tax forms (\$10 billion and \$140 billion, respectively, Chapter II, §2. "Total Costs").

<sup>59</sup> See Exec. Order No. 12,866, *supra* note 30, at §6(b)(3).

a higher rate of return letters in the year preceding its most recent report than it had since 1984 and also instituted the practice of making return letters publicly available on its website.<sup>60</sup>

OMB is also making attempts to improve the quality of regulatory analysis and to make the regulatory process more transparent. In its 2000 Report, OMB published guidance to agencies on how to conduct Regulatory Impact Analyses.<sup>61</sup> OMB announced in its 2002 draft report that it was soliciting comments on what should be considered in updating the guidance that was published in the 2000 report. This year's final report lists 5 topics that OMB intends to consider in developing updated guidance to agencies.<sup>62</sup>

Since the most recent report to Congress, OMB has involved all of the executive agencies in significant actions to improve the quality of information disseminated by Federal agencies. A 2001 Appropriations Bill directed OMB to issue government-wide guidelines that would improve the quality, objectivity, utility and integrity of Federal agencies' information.<sup>63</sup> OMB issued final information quality guidelines to all agencies in September 2001.<sup>64</sup> In these guidelines, OMB directed all agencies to issue their own agency-specific guidelines that described how the agency would: comply with OMB's information quality standards; ensure the correction of information that did not comply with the guidelines; and report to the OMB director on complaints received about

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<sup>60</sup> OMB issued 22 return letters about significant rulemakings between July 1, 2001 and Oct. 15, 2002, relative to seven letters in the previous seven years combined. See OMB 2002 Report to Congress, at 14.

<sup>61</sup> OMB was required by Section 638(c) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act and Section 628(c) of the Fiscal Year 2000 Treasury and General Government Appropriations Act to issue these guidelines. See OMB. M-00-08: "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements." March 22, 2000. (Published with 2000 Report to Congress on the Costs and Benefits of Federal Regulation.)

<sup>62</sup> See 2002 Report to Congress on the Costs and Benefits of Federal Regulation. Part I, Chapter I, Section F.

<sup>63</sup> Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L.No. 106-554, at Section 515(a); H.R. 5658, 107<sup>th</sup> Cong. (2001). This law also states that the said OMB guidelines should "(2) require that each Federal agency to which the guidelines apply –  
"(A) issue [agency-specific] guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the [OMB's general] guidelines."

information quality.<sup>65</sup> In an October 4, 2002 memo, the OIRA administrator reported that OMB had completed a review of the different agency-specific guidelines, and that “[OMB’s] implementation of the Information Quality Law represents the first time that the Executive Branch has developed a government-wide set of information quality guidelines, including agency-specific guidelines tailored to each agency’s unique programs and information.”<sup>66</sup>

OMB has recognized that the Internet is a valuable way of making regulation transparent. OMB has made more information available to the public by publishing prompt letters, return letters, memos, and press releases on its own website. There is some indication that OMB’s efforts to facilitate public involvement in the regulatory process are working: OMB received 1,700 comments on 267 regulations and 49 guidance documents in response to its most recent request for reform suggestions.<sup>67</sup> OMB has also directed agencies to use the Internet to make more information available to the public: “Agencies should use their websites to keep the public informed about information on a timely basis. Specifically, each agency or office should establish an information quality site on its website.”<sup>68</sup> In addition, OMB’s willingness to work with agencies to make Regulatory Impact Analyses more available on the Internet is highly commendable. This online collaboration will make the regulatory process more transparent and hold lawmakers more accountable.<sup>69</sup>

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<sup>64</sup> Guidelines at [http://www.whitehouse.gov/omb/fedreg/final\\_information\\_quality\\_guidelines.html](http://www.whitehouse.gov/omb/fedreg/final_information_quality_guidelines.html). (Sept. 28, 2001). Revised guidelines were republished in the Federal Register on February 22, 2002 (FR 8452, Feb. 22, 2002), available at <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>.

<sup>65</sup> OMB. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. (FR 8452, Feb. 22, 2002).

<sup>66</sup> John Graham, *Memorandum for the President’s Management Council: Executive Branch Implementation of the Information Quality Law* (Oct. 4, 2002), available at [http://www.whitehouse.gov/omb/inforeg/pmc\\_graham\\_100402.pdf](http://www.whitehouse.gov/omb/inforeg/pmc_graham_100402.pdf).

<sup>67</sup> See 2002 Report to Congress on the Costs and Benefits of Federal Regulation, Chapter IV, part C. In response to the request for reform suggestions in the 2001 draft report, OMB received 33 suggestions, and received a similar number in the previous 3 years.

<sup>68</sup> See Graham, *supra* note 66, available at <http://www.whitehouse.gov/omb/inforeg/pmcmemo.pdf>.

#### IV. Recommendations for Reforming the Grand Experiment

Earlier AEI-Brookings Joint Center analyses have strongly recommended that OMB make greater use of its in-house expertise in judging the quality of regulatory analyses.<sup>70</sup> After reviewing five annual reports, we conclude that this recommendation is not likely to be implemented. It simply is too costly politically for OMB to criticize, either implicitly or explicitly, an agency's analysis of an economically significant regulation. The primary venue OMB uses to offer such criticisms is its return letters, which are now posted on the OMB website.<sup>71</sup> These letters are a useful first step in providing feedback on regulatory analyses that are problematic, but they are only a first step.

To improve the quality of regulatory analysis and promote greater regulatory transparency, we offer the following three recommendations. The first recommendation is targeted at OMB. The second may require Congressional action, and the third would require legislation.

*First, OMB should ask the agencies to provide a standard, objective scorecard for each major regulation submitted to OMB for review.*<sup>72</sup> OMB should make all of these scorecards readily available and provide an analysis of these scorecards.

Table 6 provides an example of such a scorecard. By requiring agencies to submit a scorecard that evaluates their own analyses accompanying proposed regulations, OMB can encourage agencies to pay more attention to whether their analyses meet fundamental criteria. For example, if an agency needs to report whether it has quantified and monetized pollution benefits, whether it used the same baseline to estimate costs and benefits, whether it identified a best estimate for the regulation's expected net benefits, and whether it identified the dollar year in which it has

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<sup>69</sup> See OMB 2002 Report to Congress, *supra* note 6, at 38.

<sup>70</sup> See *Improving Regulatory Accountability*, *supra* note 10.

<sup>71</sup> See return letters, at [http://www.whitehouse.gov/omb/inforeg/prompt\\_letter.html](http://www.whitehouse.gov/omb/inforeg/prompt_letter.html).

stated its estimates, the agency will be less inclined to submit an analysis that neglects these features.

We do not believe that this requirement would impose a significant burden on the agencies, as they will be familiar with the contents of the analyses that they have performed. Answering a standardized set of straightforward questions about that analysis should require a minimal amount of extra time and resources.

The benefits of this exercise could be significant. It could help regulators and decision makers determine the strengths and weaknesses of the underlying analysis. It would also facilitate a straightforward assessment of the degree to which regulatory analyses are meeting several important criteria.

Summary statistics on the analysis could be easily compiled by looking at a set of scorecards completed by federal agencies. The quality of federal regulatory analysis could then be assessed at the level of an individual regulation, a specific program or statute, a specific department, or agency.<sup>72</sup> OMB or the public would be more able to assess which regulations were producing the highest net benefits to society, or which agencies were consistently failing to estimate overall impacts of their regulations.

OMB should calculate summary statistics based on the scorecards, observe common strengths or deficiencies in agencies' analyses, and draw conclusions about ways in which agencies'

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<sup>72</sup> Section 6(a)(3)(A) of Exec. Order 12,866 defines actions that are economically significant and which should be submitted to OMB for review.

<sup>73</sup> The type of objective measures of quality used here does not necessarily present a complete picture. An agency could follow a checklist and provide information on costs, benefits and alternatives without actually doing a good analysis for several reasons. For example, the analysis may not frame the issue correctly, there could be errors in implementation, or data could be of poor quality. See Robert W. Hahn et al., *supra* note 33.

analyses can be improved.<sup>74</sup> An examination of past reports shows that OMB's overall assessment has important omissions. For example, the reports consistently fail to note how many rules provide a point estimate of net benefits, provide a range of net benefits, or consider alternatives.<sup>75</sup>

*Second, independent agencies should be required to do regulatory analyses for economically significant regulations.* These agencies' analyses should be subject to the same requirements as executive agencies' analyses, and OMB should include independent agencies' regulations in its annual report.

Regulations from independent agencies should receive the same level of scrutiny that is applied to regulations from executive agencies. Like the executive agencies, independent agencies should have to work with OMB in estimating the effects of new regulations, and independent agencies should be required to get OMB's approval of all new regulations, to the extent permitted by law. To implement this change, a new executive order would be needed that required OMB to review regulations from both independent and executive agencies. While we think such an executive order would be lawful, there is some difference of opinion over this point.<sup>76</sup> If OMB is not allowed to review regulations from independent agencies, then Congress should develop an alternative mechanism for review that is similar to the OMB oversight process.

*Third, Congress should create a Congressional Office of Regulatory Analysis or a separate agency outside of the executive branch to assess the economic impact of important regulatory*

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<sup>74</sup> This analysis should provide several descriptive statistics to the reader, including the percentage of regulatory analyses: that present point estimates of net benefits; that present ranges for net benefits; that consider alternatives; that pass or fail a strict benefit-cost test.

<sup>75</sup> It is also important that OMB explain the meaning of the summary statistics it is communicating, or any relevant methodologies it used to calculate them. As discussed above and illustrated in Table 3, OMB notes how many new rules had benefits that "unambiguously exceeded the costs." Unfortunately, it fails to explain exactly what it means by unambiguously. One plausible definition that might be used for unambiguous is when the range given on benefits and costs do not overlap; that is, benefits could be said to unambiguously exceed costs if the lower bound on the benefits range was larger than the upper bound on the costs range.

activity occurring at all federal regulatory agencies.<sup>77</sup> A separate regulatory oversight agency outside the executive branch can provide an independent check on the analysis done in the executive branch by OMB and the agencies. It can also help to make the regulatory process more transparent. Congress can use the independent analysis to help improve regulation and the regulatory process. A Congressional Office of Regulatory Analysis could help provide a more complete picture of the regulatory process if given appropriate statutory authority.

The new office could help provide a more complete picture of the regulatory process, especially in areas that OMB has not examined carefully. For example, we only have a very incomplete understanding of the benefits and costs of regulatory activities at independent agencies. Our understanding of the impacts of smaller regulations and regulatory guidance is also quite limited, although these may be used as substitutes for larger regulations that would fall under OMB review.

Finally, a new regulatory analysis office could help Congress implement its recent legislation, such as the Small Business Regulatory Enforcement Fairness Act. The office could also aid Congress in periodically assessing the need to modify its own regulatory statutes. As it is now, if and when Congress chooses to do so, it will have to rely on the agency's own estimates of the impacts of a rule and on any other data that interested parties may or may not have submitted in the rulemaking record. Significantly, Congress now has no credible, independent source of information upon which to base such decisions. That is analogous to the pre-CBO Congress, which had to make

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<sup>76</sup> For an analysis of the legal issues involved in an Executive Order that is binding for independent agencies, see Robert W. Hahn and Cass R. Sunstein. 2002. *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost Benefit Analysis*, 150 University of Pennsylvania Law Review 1489, §II.G. (2002).

<sup>77</sup> Two years ago, Congress passed the Truth in Regulating Act, which included a provision that authorized Congress to allocate \$5.2 million to the General Accounting Office, which would evaluate agencies' cost benefit analyses as part of a three-year pilot oversight program. Congress never passed an appropriations bill to fund this program, although the House of Representatives passed a bill to appropriate funding in July, 2001.

budget and appropriations decisions based solely on the information developed by the executive branch.

The OIRA Administrator is nominated by the President, who also nominates the heads of the regulatory agencies. There is likely, therefore, to be some implicit understanding that the head of OIRA is not to press the agencies excessively hard because he or she is part of the same Administration as the agency heads. The constraints on the OMB are manifested in its annual report, in which it has, so far, simply accepted the benefit and cost estimates compiled by the agencies instead of providing any of its own assessments. A Congressional Office of Regulatory Analysis would not have this conflict of interest and could more easily criticize the analysis done by federal regulatory agencies. Competition between agencies has the potential to enhance the analysis produced by OIRA and its independent competitor, much like competition between CBO and OMB has done in the budget arena.

There are a host of recommendations for reform that we do not consider here.<sup>78</sup> We have focused on three that we think are particularly important, recognizing that there is no “silver bullet” for addressing the issue of how best to make the regulatory process more transparent and improve the quality of analysis.

## **V. Conclusion**

This paper evaluates a grand regulatory experiment – the first of its kind in the world – aimed at providing an objective characterization of the costs and benefits of federal regulation as well as identifying opportunities for reform. This experiment, if successful, could have important implications for reviewing the impact of regulations across the world. Countries and regions, such

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<sup>78</sup> See *Improving Regulatory Accountability*, supra note 11.



as the European Union, are showing greater interest in introducing new approaches that will allow them to improve their assessment of regulatory activity.<sup>79</sup>

Five U.S. government reports on the costs and benefits of regulation now have been completed. We offered a critical evaluation of these reports using an approach that scores the reports on various dimensions.

On the positive side, each report provides useful information on the costs and benefits of regulation and the regulatory process. In addition, the reports show how the regulatory oversight function in the U.S. has changed in a relatively short period of time. In particular, recent changes at OMB suggest a heightened concern with regulatory transparency, a greater focus on identifying regulations that are likely to do more good than harm, and a greater focus on targeting regulations for reform or elimination.<sup>80</sup>

On the negative side, there are clear limits to how far an agency like OMB can go in providing an objective critique of sister agencies. One of the telling findings of our analysis is that OMB has taken its sister agencies' analyses of regulations as the basic point of departure for providing information in all of its reports, although OMB has also used its annual report as a place to discuss shortcomings in agencies' analyses.<sup>81</sup> With well-known defects in many of these analyses, we think the degree to which OMB treats agency numbers as reliable is problematic. In addition, OMB has never directly criticized regulations or offered reform suggestions that came from OMB. Instead, it used suggestions from outsiders as a way of partially insulating itself from the political "heat" it would take for making these suggestions. We think this is an innovative

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<sup>79</sup> See *Regulatory Reform, Documentation*, OECD, at <http://www.oecd.org/EN/documentation/0,,EN-documentation-2-nodirectorate-no-no-no-2,00.html>.

<sup>80</sup> A large amount of the credit should go to the administrator of the Office of Information and Regulatory Affairs, John Graham.

<sup>81</sup> See, for example, OMB's discussion of the EPA's Section 812 Retrospective Report, OMB 2000 Report to Congress, Section II. A. 1.

approach to a difficult political problem, but we also believe there are real limits to what OMB can do in this area.

Even if the agency numbers on the impacts of regulation are taken as given, OMB can still provide a valuable service by presenting an objective characterization of regulatory analyses that are done by the agencies. This includes information on the number of regulations that are likely to pass or fail a cost-benefit test and the number of RIAs that consider alternatives to the regulation.

The basic problem that an agency like OMB faces in reporting on regulatory policy and developing more effective regulatory policy is that it operates in an intensely political environment. Some of the recent innovations by OMB, such as prompt letters, represent useful ways of addressing the politics and the economics of improving regulation. In that regard, we think that OMB's move to organize agencies to work on information quality guidelines was a good one.<sup>82</sup> A key insight for those interested in political economy is that strategic use of the administrative process can result in policies that would generally be viewed as enhancing efficiency and transparency.

By and large, we think that the grand experiment in regulatory reporting represents a significant step forward in providing insights into the regulatory process as well as the costs and benefits of regulation. But a review of the reports also illustrates some of the problems with having a government agency do such an analysis. We have recommended that OMB require agencies to issue a scorecard evaluating each agency regulation; that OMB summarize the strengths and weaknesses of regulations using this scorecard; that independent agencies be included in OMB's analysis; and that Congress create an agency or office outside of the executive to perform a regulatory evaluation function similar to that of OMB's.

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<sup>82</sup> See OMB 2002 Report to Congress, *supra* note 6, at 25.

While we are highly critical of some aspects of these reports, we are guardedly optimistic about their potential to help improve regulation and the regulatory process. They demonstrate that it is possible for a federal agency to provide a reasonable characterization of the costs and benefits of regulation and offer concrete suggestions for improving specific regulations— which is no small feat indeed.

**Table 1: Summary of Legislative Requirements for OMB Reports**

Report to Congress on the Costs and Benefits of Federal Regulations	Requirements
1997 Report to Congress on the Costs and Benefits of Federal Regulations September 1997 <sup>i</sup>	(1) an estimate of the total annual costs and benefits of Federal Regulatory programs, including quantitative and non-quantitative measures of regulatory costs and benefits;
1998 Report to Congress on the Costs and Benefits of Federal Regulations January 1999 <sup>iii</sup>	(2) an estimate of the annual costs and benefits (including quantitative and non-quantitative measures) of each rule that is likely to have a gross annual effect on the economy of \$100,000,000 or more in increased costs; (3) an assessment of the direct and indirect impacts of Federal rules on the private sector, State and local government, and the Federal Government; and (4) recommendations from the Director and a description of significant public comments to reform or eliminate any Federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the Nation's resources. <sup>ii</sup>
2000 Report to Congress on the Costs and Benefits of Federal Regulations June 2000 <sup>iv</sup>	(1) an estimate of the total annual costs and benefits (including quantifiable and non-quantifiable effects) of Federal rules and paperwork, to the extent feasible:
2001 Report to Congress on the Costs and Benefits of Federal Regulations December 2001 <sup>vi</sup>	(A) in the aggregate; (B) by agency and agency program; and (C) by major rule;
2002 Report to Congress on the Costs and Benefits of Federal Regulations December 2002 <sup>vii</sup>	(2) an analysis of impacts of Federal regulation on State, local, and tribal government, small business, wages, and economic growth; and (3) recommendations for reform. <sup>v</sup>

<sup>i</sup> This report was called for by the Treasury, Postal Services and General Government Appropriations Act, 1997 § 645 (a) (P.L. 104-208).

<sup>ii</sup> See OMB 1997 Report to Congress, at 1.

<sup>iii</sup> This report was called for by the Treasury and General Government Appropriations Act, 1998, § 625 (P.L. 105-61).

<sup>iv</sup> This report was called for by the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, § 638 (a).

<sup>v</sup> See OMB 2000 Report to Congress, at 1; See OMB 2001 Report to Congress, at 6.

<sup>vi</sup> This report was called for by the FY 2000 Treasury and General Government Appropriations Act., § 628 (a).

<sup>vii</sup> This report was called for by the FY 2001 Treasury and General Government Appropriations Act, § 624.

**Table 2: Information on Regulations and their Costs and Benefits**

	1997	1998	2000	2001	2002
Date range of economically significant final rules that were not included in a previous report	(4/96 - 3/97)	(4/95 to 3/96) and (4/97-3/98)	(4/98 - 3/99)	(4/99 - 3/00)	(4/99 - 9/01) <sup>i</sup>
Does OMB take the agency's numbers as given?	Yes	Yes	Yes	Yes	Yes – but also presented limitations
How many new non-transfer rules were discussed in the report:	21	22	22	12	34
Did the report state how many new social regulations (or "non-transfer") rules <sup>ii</sup> :					
quantified some costs?	No <sup>iii</sup>	19 of 22 <sup>iv</sup>	16 of 22 <sup>v</sup>	8 of 12 <sup>vi</sup>	27 of 34 <sup>vii</sup>
monetized some costs?	16 of 21 <sup>viii</sup>	19 of 22 <sup>ix</sup>	16 of 22 <sup>x</sup>	8 of 12 <sup>xi</sup>	27 of 34 <sup>xii</sup>
quantified some benefits?	14 of 21 <sup>xiii</sup>	16 of 22 <sup>xiv</sup>	16 of 22 <sup>xv</sup>	9 of 12 <sup>xvi</sup>	20 of 34 <sup>xvii</sup>
monetized some benefits?	8 of 21 <sup>xviii</sup>	13 of 22 <sup>xix</sup>	12 of 22 <sup>xx</sup>	7 of 12 <sup>xxi</sup>	19 of 34 <sup>xxii</sup>
monetized at least some costs and some benefits in the agency's analysis?	No <sup>xxiii</sup>	13 of 22 <sup>xxiv</sup>	10 of 22 <sup>xxv</sup>	6 of 12 <sup>xxvi</sup>	12 of 34 <sup>xxvii</sup>
quantified neither costs nor benefits?	5 of 21 <sup>xxviii</sup>	No <sup>xxix</sup>	No	2 of 12 <sup>xxx</sup>	3 of 34 <sup>xxxi</sup>
Are any quantitative cost or benefit estimates provided for independent agencies' regulations?	Yes <sup>xxxii</sup>	Yes <sup>xxxiii</sup>	Yes <sup>xxxiv</sup>	Yes <sup>xxxv</sup>	Yes <sup>xxxvi</sup>
Did OMB monetize any costs or benefits that the agencies' RIAs did not?	No <sup>xxxvii</sup>	Yes <sup>xxxviii</sup>	Yes <sup>xxxix</sup>	No	Yes <sup>xl</sup>
Did OMB monetize lives saved when an agency did not?	No <sup>xli</sup>	Yes <sup>xlii</sup>	Yes <sup>xliii</sup>	No <sup>xliv</sup>	Yes <sup>xlv</sup>
Did OMB monetize any pollution benefits?	No <sup>xlvi</sup>	Yes <sup>xlvi</sup>	Yes <sup>xlvi</sup>	Yes <sup>xlvi</sup>	Yes <sup>l</sup>

<sup>i</sup> Although the 2001 report reported agency information on rules that were issued between 4/99 and 3/00, that report did not update the previous year's aggregate estimates with estimates for the newer rules. The 2002 report presents the first aggregate estimates that include costs on rules that were issued between 4/99 and 9/01. See OMB 2002 Report to Congress and OMB 2001 Report to Congress.

<sup>ii</sup> The greater number in cells reporting information on non-transfer rules represents the total number of non-transfer rules in that year's report (21, 22, 22, 12, and 34). OMB's 1998 report describes non-transfer rules as the "regulations requiring substantial additional private expenditures and/or providing new social benefits" OMB 1998 report to Congress, at 45.

<sup>iii</sup> OIRA reviewed 41 rules in the period covered by the report; "Of the 41 rules reviewed by OIRA, 21 are regulations requiring substantial additional private expenditures and/or providing new social benefits." OMB 1997 Report to Congress, Chapter III, § 3 "social regulation." The report does not state how many rules quantified but did not monetize costs. It does state this information for benefits, suggesting that there may not have been any rules with quantified, but un-monetized cost estimates. The report does state that "in four of the 21 cases, agencies provided estimates of non-monetized, quantitative effects that were intended to better inform decision makers, but which were not identified as benefit or cost estimates per se." OMB 1997 Report to Congress, Chapter 3, § 3, "Cost Analysis."

<sup>iv</sup> "Of the 33 rules reviewed by OIRA, 22 are regulations requiring substantial additional private expenditures and/or providing new social benefits" (The other 11 are "transfer" rules). "In 19 of the 22 cases, agencies provided monetized cost estimates...For the remaining three rules, the agencies did not estimate costs." Chapter II, §A.2 : "cost analysis."

<sup>v</sup> "Of the 44 rules reviewed by OMB and listed in Table 7,22 are regulations we classify as 'social regulations,'<sup>30</sup> that is, requiring substantial additional private expenditures and/or providing new social benefits." §II.A. "Social Regulation." "In 16 of the 22 (non-transfer) rules listed in Table 7, agencies provided monetized cost estimates... Finally in six cases, agencies did not report any quantified (or monetized) benefit estimates." §II, A.2 "Cost Analysis."

<sup>vi</sup> "Of the 31 economically significant rules reviewed by OMB,12 are regulations requiring substantial additional private expenditures and/or providing new social benefits,17 as described in Table 4...For eight of the 12 rules, agencies provided monetized cost estimates...For the remaining four rules, the agencies did not estimate costs." OMB 2001 Report to Congress.

<sup>vii</sup> "For 27 of the 34 rules, agencies provided monetized cost estimates... For the remaining seven rules... the agencies did not estimate costs." OMB 2002 Report to Congress, Table 9, at 50-57.

<sup>viii</sup> In 16 of the 21 cases, agencies provided monetized cost estimates. See Chapter 3, § 3, "Cost Analysis."

<sup>ix</sup> "In 19 of the 22 cases, agencies provided monetized cost estimates." Chapter II, §A.2 : "cost analysis."

<sup>x</sup> "Of the 44 rules reviewed by OMB and listed in Table 7, 22 are regulations we classify as 'social regulations,' that is, requiring substantial additional private expenditures and/or providing new social benefits." §II.A. "Social Regulation." "In 16 of the 22 (non-transfer) rules listed in Table 7, agencies provided monetized cost estimates... Finally in six cases, agencies did not report any quantified (or monetized) benefit estimates." §II, A.2 "Cost Analysis."

<sup>xi</sup> For eight of the 12 rules, agencies provided monetized cost estimates...For the remaining four rules, the agencies did not estimate costs. See OMB 2002 Report to Congress, at 30.

<sup>xii</sup> See OMB 2002 Report to Congress, Table 9, at 50-57.

<sup>xiii</sup> 8 rules monetized benefits; "in six cases, agencies provided benefit estimates that were quantified but not monetized... finally, in seven cases, agencies reported neither monetized nor quantified benefit estimates." Chapter 3, § 3, "Benefits Analysis."

<sup>xiv</sup> "In three cases, agencies provided quantified but not monetized benefit estimates." Chapter II, §A.1 : "benefits analysis."

<sup>xv</sup> "In four cases,agencies provided quantified benefit estimates but provided no monetized estimates." §II.A.1. "Benefits Analysis."

<sup>xvi</sup> It is unclear for how many rules the agencies may have reported quantified, but not monetized benefits: "Agencies monetized at least some benefit estimates for seven of the 12 rules...In one case, the agency provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important quantified components of benefits... In three cases, agencies did not report any quantified (or monetized) benefit estimates." OMB 2001 Report to Congress, at 30.

<sup>xvii</sup> "In 14 cases, agencies did not report any quantified or monetized benefit estimates." OMB 2002 Report to Congress ,Table 9, at 50-57.

<sup>xviii</sup> OIRA reviewed 41 rules in the period covered by the report; "Of the 41 rules reviewed by OIRA, 21 are regulations requiring substantial additional private expenditures and/or providing new social benefits." Chapter 3, § 3.

<sup>xix</sup> "Of the 22 (non-transfer) rules listed in Table 9, agencies monetized all the benefit estimates that they were able to quantify in eight cases. In five cases, agencies provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important components of benefits." Chapter II, §A.1 : "benefits analysis."

<sup>xx</sup> "Specifically, of the 22 (non-transfer) rules listed in Table 6, agencies provided all quantified benefit estimates in a monetized form in ten cases. In two cases, agencies provided some quantified benefit estimates in monetized form, but did not monetize other, important quantified components of benefits." §II.A.1. "Benefits Analysis."

<sup>xxi</sup> "Agencies monetized at least some benefit estimates for seven of the 12 rules including...In one case, the agency provided some of the benefit estimates in monetized and quantified form, but did not monetize other, important quantified components of benefits." OMB 2001 Report to Congress, at 30.

<sup>xxii</sup> See OMB 2002 Report to Congress, Table 9, at 50-57.

<sup>xxiii</sup> There is no stated value of how many rules actually monetized costs and benefits in the agency's analysis. Table 7 provides some rules that had monetized costs and benefits; some rules had just costs monetized while others had just benefits monetized.

<sup>xxiv</sup> "Thirteen of these 22 rules provided at least some monetized estimates of both benefits and costs." Chapter II, § A.3. "net monetized benefits."

<sup>xxv</sup> "Ten of the 22 (non-transfer) rules listed in Table 7 provided at least some monetized estimates of both benefits and costs." Chapter II, §A.3 "Net monetized benefits."

<sup>xxvi</sup> "Six of the 12 rules provided at least some monetized estimates of both benefits and costs." OMB 2001 Report to Congress, at 30.

<sup>xxvii</sup> OMB 2002 Report to Congress, Table 9, at 50-57.

<sup>xxviii</sup> "First, there are no quantified or monetized estimates for five of the rules." Chapter 3, § 3, "aggregate effects."

<sup>xxix</sup> The report does not make this information available explicitly. Table 9 shows two rules for which both costs and benefits are reported as “not estimated.”

<sup>xxx</sup> “Two of the rules in Table 4 are classified as economically significant even though the agency did not provide any quantified estimates their effects.” OMB 2001 Report to Congress, at 31.

<sup>xxxi</sup> “Three of the rules in Table 9 are classified as economically significant even though the agency did not provide any quantified estimates of their effects”. OMB 2002 Report to Congress, at 48.

<sup>xxxii</sup> OMB reports an estimate of the information collection costs that result from independent agencies' regulations: \$10 billion in 1996 dollars. See OMB 1997 Report to Congress, 27-28.

<sup>xxxiii</sup> Estimates for SEC regulations cited. Table 10 reports how many rules from independent agencies quantified costs or benefits. See OMB 1999 Report to Congress, at 60-62.

<sup>xxxiv</sup> Table 8 reports information on how often independent agencies monetized or quantified costs and benefits. Table 6 includes information collection costs from independent agencies. Monetized estimates of some SEC regulations are presented in the text.

<sup>xxxv</sup> Table 5 reports how often independent agencies quantified and monetized costs and benefits. A monetized benefit estimate for one FERC rule is presented in the text. Table 3 includes information collection costs incurred by independent agencies' regulations. See OMB 2001 Report to Congress, at 32.

<sup>xxxvi</sup> OMB 2002 Report to Congress (Table 11, at 61-62)

<sup>xxxvii</sup> OMB does reformat some of the monetized estimates that were provided by the agencies. For example, for the Hazard Analysis and Critical Control Points regulation, it converted lump total cost and benefit figures that had been discounted over 20 years to an annual figure. See Table 7 (agencies' estimates) and Table 8 (reflecting OMB adjustments). See chapter 3, § aggregate effects.

<sup>xxxviii</sup> See OMB 1999 Report to Congress, at 68, 71-72.

<sup>xxxix</sup> See page 44: “...we have monetized these estimates in order to convert these effects into a common unit.” Report states specific values used to monetize quantitative effects. OMB 2000 Report to Congress, at 44-46.

<sup>xl</sup> OMB 2002 Report to Congress, Table 9, at 50-57; OMB 2002 Report to Congress, at 111-114.

<sup>xli</sup> On page 11, table 2 reports the only aggregated estimates in this report; they are not updated from the previous year's report and the footnote states that they do not include any benefits that the agencies did not monetize. The report states that OMB did not modify its estimates in its 2001 report and instead took the opportunity to review its methodologies. See OMB 1997 Report to Congress, at 10-11.

<sup>xlii</sup> OMB monetized lives saved with different values for different rules: “we did not attempt to quantify or monetize fatality risk reductions in cases where the agency did not at least quantify them.” OMB valued: statistical life years saved by HHS's organ donor rule at \$116,500 each (value came from agency's analysis even though HHS did not monetize the life years saved); statistical lives saved by NHTSA's air bag depowering rule at \$2.7 million each (value came from agency's analysis even though NHTSA did not monetize lives saved); “benefits for which agencies have not adopted estimates of the value of reducing [fatality] risks” by using estimates supported by the relevant academic literature”; statistical lives saved by DOL's respirator rule at \$5 million each. OMB 1999 Report to Congress, at 71.

<sup>xliii</sup> OMB monetized lives saved with different values for different rules. See OMB 2000 Report to Congress, at 44:

\*“we did not attempt to quantify or monetize fatality risk reductions in cases where the agency did not at least quantify them.”

OMB valued:

\*statistical life years saved by HHS's organ donor rule at \$116,500 each (value came from agency's analysis even though HHS did not monetize the life years saved)

\*statistical lives saved by NHTSA's air bag depowering rule at \$2.7 million each (value came from agency's analysis even though NHTSA did not monetize lives saved)

\*“benefits for which agencies have not adopted estimates of the value of reducing [fatality] risks” by using “estimates supported by the relevant academic literature”

\*statistical lives saved by DOL's respirator rule at \$5 million each

<sup>xliv</sup> On page 11, table 2 reports the only aggregated estimates in this report; they are not updated from the previous year's report and the footnote states that they do not include any benefits that the agencies did not monetize. The report states that OMB did not modify its estimates in its 2001 report and instead took the opportunity to review its methodologies. See OMB 2001 Report to Congress, at 10-11.

<sup>xlv</sup> OMB 2002 Report to Congress, at 111, providing monetized lives saved with different values for different rules.

“where the agency provided only a quantified estimate of fatality risk, but did not monetize it, we have monetized these estimates...”

\*report gives an HHS rule and a NHTSA rule (also cited in 1998 and 2000) as examples of rules for which OMB obtained the value it used to monetize lives/life-years saved from the agency and states that when no value was provided by an agency, OMB used a value from academic literature to monetize.

<sup>xlvi</sup> The report includes aggregate estimates of social regulation, which may include monetized pollution benefits.

<sup>xlvii</sup> See OMB 1999 Report To Congress, Table 6, at 30.

<sup>xlviii</sup> See discussion of benefits of drinking water regulation, OMB 2000 Report to Congress, at 30-31. Tables 17 and 18 present benefit estimates for individual rules but do not specify when or what parts of benefits are monetized pollution benefits.

<sup>xlix</sup> See OMB 2001 Report to Congress, at 16 for discussion of benefits of drinking water regulations. Report contains no new estimation by OMB. Report states agency costs and benefits for new rules (Table 4) but does not specify when or what parts of benefits are monetized pollution benefits.

<sup>l</sup> OMB 2002 Report to Congress, at 42, stating monetized pollution reduction benefits of drinking water regulations.

**Table 3: Information on Net Benefits of Individual Regulations**

	1997	1998	2000	2001	2002
Did the report state how many new social regulations:					
Had positive net benefits in the agency's analysis?	7 of 21 <sup>i</sup>	6 of 22 <sup>ii</sup>	8 of 22 <sup>iii</sup>	3 of 12 <sup>iv</sup>	9 of 34 <sup>v</sup>
Had negative net benefits in the agency's analysis?	No	4 of 22 <sup>vi</sup>	No	Unclear <sup>vii</sup>	2 of 34 <sup>viii</sup>
Reported a point estimate for net benefits?	No	No <sup>ix</sup>	No <sup>x</sup>	No <sup>xi</sup>	No <sup>xii</sup>
Reported a range for net benefits?	No <sup>xiii</sup>	No <sup>xiv</sup>	No <sup>xv</sup>	No <sup>xvi</sup>	No <sup>xvii</sup>
Did the report state how net benefits were calculated?	No <sup>xviii</sup>	No <sup>xix</sup>	No <sup>xx</sup>	No <sup>xxi</sup>	No <sup>xxii</sup>

<sup>i</sup> "Seven of these twenty-one rules have positive net monetized benefits -- that is, the estimated monetized benefits exceed the estimated monetized costs of the rules." OMB 1997 Report to Congress.

<sup>ii</sup> "Thirteen of these twenty-two rules provided at least some monetized estimates of both benefits and costs. Of those, six have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules." Chapter II, §A.3: "net monetized benefits."

<sup>iii</sup> "...Of those, eight have positive net monetized benefits, that is, estimated monetized benefits that exceed the estimated monetized costs of the rules." Chapter II, §A.3: "Net monetized benefits."

<sup>iv</sup> "Of those, three have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules." OMB 2001 Report to Congress, at 30-31.

<sup>v</sup> "Twelve of the thirty-four rules provided at least some monetized estimates of both benefits and costs. Of these, the estimated monetized benefits of nine of the rules unambiguously exceed the estimated monetized costs." OMB 2002 Report to Congress, at 48.

<sup>vi</sup> "Four rules resulted in negative net monetized benefits." Chapter II, §A.3 : "net monetized benefits."

<sup>vii</sup> "Of the six rules that provided at least some monetized estimates of both benefits and costs, three have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules... Two EPA rules yielded estimates that included the possibility of both positive and negative net benefits." OMB 2001 Report to Congress, at 30-31

<sup>viii</sup> "Two rules have negative net monetized benefits with variation ranging from approximately \$10 million per year to \$70 million per year." OMB 2002 Report to Congress, at 48.

<sup>ix</sup> The report provides a table that has point estimates for both costs and benefits for 5 rules, but it is not clear from reading the OMB report whether the point estimates are best estimates, if they are complete, or if the underlying assumptions are consistent across costs and benefits. OMB 1998 Report to Congress, Table 9, at 46.

<sup>x</sup> Table 7 shows that the agencies provided monetized point estimates for both benefits and costs for 3 of the rules in that table but it is not clear whether the point estimates are point estimates, consistent between the costs and benefits, or complete. See OMB 2000 Report to Congress.

<sup>xi</sup> Table 4 shows that the agencies provided monetized point estimates for both benefits and costs for 1 of the rules in that table but it is not clear whether the point estimates are point estimates, consistent between the costs and benefits, or complete. See OMB 2001 Report to Congress.



<sup>xii</sup> The OMB 2002 Report to Congress (§ 3, “Net Monetized Benefits”) reports that 12 of 34 rules monetized both costs and benefits and discusses which of those rules have positive and negative net benefits but it is not clear how many of the rules provide point estimates or point estimates of net benefits. See OMB 2002 Report to Congress, at 48.

<sup>xiii</sup> The report only says how many had positive net benefits, and then states: “For example, FDA estimated its tobacco rule would result in \$9 to 10.2 billion per year in net monetized benefits (benefits minus costs). EPA estimated its Accidental Release Prevention rule would generate \$77 million per year in net monetized benefits.” OMB 1997 Report to Congress.

<sup>xiv</sup> The report only states how many rules had positive and negative net benefits, gives examples for each, and states that two rules had net benefits that ranged from positive to negative. See Chapter II, §A.3: “net monetized benefits.”

<sup>xv</sup> The report states, “Ten of the 22 (non-transfer) rules listed in Table 7 provided at least some monetized estimates of both benefits and costs” and provides two examples of net benefits of specific rules, one of which is presented as a range.

<sup>xvi</sup> See “Net Monetized Benefits” section, OMB 2001 Report to Congress, at 30.

<sup>xvii</sup> See “Net Monetized Benefits” section, OMB 2002 Report to Congress, at 48. This section discusses the ways that agencies presented net benefits in more detail than other years’ reports; it states how many rules presented costs and benefits in annualized form (2), how many used present value (5), and how many combine annualized benefits with annual costs (4).

<sup>xviii</sup> See text: “Seven (7) of these 21 rules have positive net monetized benefits -- that is, the estimated monetized benefits exceed the estimated monetized costs of the rules. For example, FDA estimated its tobacco rule would result in \$9 to 10.2 billion per year in net monetized benefits (benefits minus costs).” OMB 1997 Report to Congress.

<sup>xix</sup> Not stated: “Of those, six have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules.” The report says that for some rules, it was not possible to determine whether net benefits were positive because the range of net benefits had positive and negative endpoints; but it is not clear whether the range of net benefits was taken as given from an agency, or how it was constructed. OMB 1998 Report to Congress.

<sup>xx</sup> Not stated: the report says: “eight have positive net monetized benefits, that is, estimated monetized benefits that exceed the estimated monetized costs of the rules.” OMB 2000 Report to Congress.

<sup>xxi</sup> Not stated: “...three have positive net monetized benefits, that is, estimated monetized benefits that unambiguously exceed the estimated monetized costs of the rules.” OMB 2001 Report to Congress.

<sup>xxii</sup> Not stated, although the text states that it was sometimes possible for a rule to have either positive or negative net benefits, implying that both extremes of ranges of costs and benefits were being considered: “One rule yielded an estimate that included the possibility of positive or negative net benefits. EPA estimated that the expected benefits from identifying dangerous levels of lead range from \$45 billion to \$176 billion over 50 years depending on the underlying model, resulting in the net benefit estimates ranging from -\$25 billion to \$106 billion.” OMB 2002 Report to Congress, at 48.

**Table 4: Aggregate Benefits**

	1997	1998	2000	2001	2002
Did the report provide any information on aggregate net benefits?	Yes <sup>i</sup>	Yes <sup>ii</sup>	Yes <sup>iii</sup>	Yes <sup>iv</sup>	No
Is a point estimate reported for aggregate net benefits?	No; a lower bound (\$298 billion) is provided for benefits and a point estimate is provided for aggregate costs(\$279 billion). <sup>v</sup>	No	No; aggregate figures for costs, benefits, and net benefits are presented as ranges. <sup>vi</sup>	No; report presents estimates for social, economic, and process regulation separately and does not sum them. <sup>vii</sup>	No
Is a range reported for aggregate net benefits?	Not explicitly <sup>viii</sup>	Yes <sup>ix</sup>	Yes <sup>x</sup>	Yes <sup>xi</sup>	No
Are aggregate estimates of net benefits broken down by agency or program?	No <sup>xii</sup>	Partially <sup>xiii</sup>	Partially <sup>xiv</sup>	No	No
Are aggregate estimates updated (do they include rules that were finalized since the previous OMB report)?	N/A <sup>xv</sup>	Yes <sup>xvi</sup>	Yes <sup>xvii</sup>	No <sup>xviii</sup>	No
Did the report forecast annual aggregate net benefits?	No	Yes <sup>xix</sup>	Yes <sup>xx</sup>	No	No
What is the source of the aggregate estimates?	OMB and external sources <sup>xxi</sup>	OMB and external sources <sup>xxii</sup>	OMB and external sources <sup>xxiii</sup>	OMB and external sources <sup>xxiv</sup>	There are none.

<sup>i</sup> Table 5 only presents aggregate costs and benefits separately but aggregate net benefits are discussed in the text. See Chapter II, section 2, "Our Estimates of the Costs and Benefits of Existing Regulations"

<sup>ii</sup> See OMB 1998 Report to Congress, Table 3, at 17.

<sup>iii</sup> See OMB 2000 Report to Congress, Table 4.

<sup>iv</sup> See OMB 2001 Report to Congress, Table 2, although this replicates table 4 from the 2000 report with no updating.

<sup>v</sup> See OMB 1997 Report to Congress, Table 2.

<sup>vi</sup> See chapter II; tables 1-5 present estimates of social regulation's costs and benefits. Table 6 presents total cost, in hours, of process regulation. OMB 2000 Report to Congress, at 28, discusses different estimates of the efficiency and transfer costs of economic regulation from academic literature but provides no figures on benefits or net benefits.

<sup>vii</sup> See Chapter I, §II, and tables 1-3. OMB 2001 Report, at 10,12, discusses different estimates of the efficiency and transfer costs of economic regulation from academic literature but provides no figures on benefits or net benefits.

<sup>viii</sup> Net Benefits not explicitly reported; costs and benefits are reported separately. 1996 dollars. See OMB 1997 Report, Table 4.

<sup>ix</sup> Ranges for estimated aggregate net benefits are presented for social regulation, and are also presented for subcategories of social regulation: environmental, transportation, labor, and other. See OMB 1998 Report to Congress, Table 3, at 17. Point estimates are provided for the costs and benefits of other regulatory activities such as tax compliance and disclosure requirements. See OMB 1998 Report to Congress, Table 4, at 19.

<sup>x</sup> A range is provided for aggregate net benefits of social regulation: \$25 to 1,653 billion 1996 dollars. Net Benefits are reported for social regulation: \$25 to 1,653 billion, 1996 dollars. See OMB 2000 Report to Congress, Table 4. Agencies' numbers are summed for regulations that submitted quantitative estimates between 1995 and 1999, and reported separately as ranges for total costs and total benefits. See OMB 2000 Report to Congress, Table 15.

<sup>xi</sup> Net benefits are reported for social regulation: \$25 to 1,653 billion, 1996 dollars. See OMB 2001 Report to Congress, Table 2, at 11. No estimates are provided for non-social regulations. See OMB 2001 Report to Congress, at 11-12, for the report's discussion on economic and process regulation, which includes no quantitative estimates).

<sup>xii</sup> Estimates are broken down by 'environment', 'other social', 'economic', and 'paperwork/disclosure'. See OMB 1997 Report to Congress, Tables 1-4.

<sup>xiii</sup> Costs, benefits and net benefits are only aggregated for social regulation in this report; social regulation is categorized by: environmental, transportation, labor, and other social. See OMB 1998 Report to Congress, Table 3, at 17.

<sup>xiv</sup> Social regulation is categorized by: environmental, transportation, labor, and other social. See OMB 2000 Report to Congress, Table 4. Also, the costs and benefits of social regulations are forecasted for 2000, 2005, 2010, and 2010 by agency. Net benefits are not explicitly reported. See Table 5. See Table 15 for totals for all agencies.

<sup>xv</sup> "Using the estimates for Federally mandated regulatory costs from the Cost of Clean report (1990, Table 8-9D) for environmental regulation and Hahn and Hird's estimates for other social regulation for a 1988 base, we added the cost of all major regulations reviewed by OMB under Executive Orders 12291 and 12866 and issued by the agencies between 1987 and 1996. Table 1 shows our calculations for the costs of social regulations." OMB 1997 Report to Congress, Table 1.

<sup>xvi</sup> "In particular, this year we present more categories of regulatory costs and benefits than last year and use our own estimates based on agency data of costs and benefits of individual rules reviewed by OMB over the last three years (April 1, 1995 to March 31, 1998). OMB 1998 Report to Congress, at 4. Previous report estimated costs for rules issued through 1996. See OMB 1997 Report to Congress, *supra* note xv.

<sup>xvii</sup> Aggregated estimates for social regulations include regulations as of Q1, 1999. See OMB 2000 Report to Congress, Table 4.

<sup>xviii</sup> "Table 1 presents estimates of the total annual costs and benefits of Federal health, safety and environment rules issued between 1987 and 2000. Table 2 presents the total costs and benefits of Federal health, safety, and environmental rules as of the first quarter of 2000.7 The estimates are the same as those in last year's report.." OMB 2001 Report to Congress, at 10, § II.A.

<sup>xix</sup> Forecasted benefits and costs are reported, though net benefits are not calculated. See OMB 1998 Report to Congress, Table 13, at 74.

<sup>xx</sup> The costs and benefits of social regulations are forecasted for 2000, 2005, 2010, and 2010 by agency. Net benefits are not explicitly reported. See OMB 2000 Report to Congress, Table 5. See OMB 2000 Report to Congress, Table 15 for totals for all agencies.

<sup>xxi</sup> "Using the estimates for Federally mandated regulatory costs from the Cost of Clean report (1990, Table 8-9D) for environmental regulation and Hahn and Hird's estimates for other social regulation for a 1988 base, we added the cost of all major regulations reviewed by OMB under Executive Orders 12291 and 12866 and issued by the agencies between 1987 and 1996. Table 1 shows our calculations for the costs of social regulations." OMB 1997 Report to Congress, Table 1.

<sup>xxii</sup> "As we did last year, we use the study by Hahn and Hird (1991) for the costs and benefits of regulations as of 1988, supplemented by an Environmental Protection Agency (EPA) Cost of a Clean Environment report to Congress (1990). We also use a new (1997) retrospective EPA report to Congress (The Benefits and Costs of the Clean Air Act, 1970 to 1990)." OMB 1998 Report to Congress, at 4.

<sup>xxiii</sup> See OMB 2000 Report to Congress, at 27.

<sup>xxiv</sup> "Since only a limited amount of additional information on aggregate effects has become available since the third report was issued on June 2, 2000, we are not revising our estimates of aggregate, agency, and program cost and benefits." OMB 2001 Report to Congress, at 7.

**Table 5: Other Information provided by OMB**

	1997	1998	2000	2001	2002
Does the report suggest programs for elimination or improvement?	No <sup>i</sup>	No <sup>ii</sup>	No <sup>iii</sup>	No <sup>iv</sup>	No <sup>v</sup>
Does the report suggest regulations for elimination or improvement?	No <sup>vi</sup>	No <sup>vii</sup>	No <sup>viii</sup>	Yes <sup>ix</sup>	Yes <sup>x</sup>
Does the report address impacts of federal regulation on State, local, and tribal government, small business, wages, and economic growth?	No <sup>xi</sup>	No <sup>xii</sup>	Yes <sup>xiii</sup>	Yes <sup>xiv</sup>	Yes <sup>xv</sup>
Are information collection costs reported?	Partially <sup>xvi</sup>	Yes <sup>xvii</sup>	Yes <sup>xviii</sup>	Yes <sup>xix</sup>	Yes <sup>xx</sup>
Does OMB discuss the use of prompt letters where benefits exceed costs?	No	No	No	Yes <sup>xxi</sup>	Yes <sup>xxii</sup>
Did OMB solicit guidance on what regulations to review?	Yes <sup>xxiii</sup>	Yes <sup>xxiv</sup>	No	Yes <sup>xxv</sup>	Yes <sup>xxvi</sup>
Did the report include an executive summary?	No	No	No	Yes <sup>xxvii</sup>	Yes <sup>xxviii</sup>

<sup>i</sup> “We do not, however, believe that the existing evidence on aggregate costs and benefits rises to the level that would support a recommendation to eliminate any regulatory program.” OMB 1997 Report to Congress, Chapter IV: Recommendations.

<sup>ii</sup> “...we do not believe we have enough information to make definitive recommendations on specific regulatory programs based on the incomplete and uneven data that we discuss at length above.” OMB lists ten specific reform initiatives from the agencies that were published in The Regulatory Plan, which it endorses. OMB 1998 Report to Congress, at 84.

<sup>iii</sup> Reform recommendation endorses select reform plans that the agencies published in the annual regulatory plan (64 FR 63883) but does not make original suggestions. Also, none of the agencies’ planned reforms that are listed in the report address regulatory programs, only individual rules. In the legislation that asks for this report, unlike the legislation that asks for the 1997 and 1998 reports, Congress does not explicitly ask for recommendations on reforming programs. See OMB 2000 Report to Congress.

<sup>iv</sup> Some of the public’s suggested reforms pertain to more than one specific rule, but none of them suggest reforming a complete program, such as Superfund. In the legislation that asks for this report, unlike the legislation that asks for the 1997 and 1998 reports, Congress does not explicitly ask for recommendations on reforming programs. See OMB 2001 Report to Congress.

<sup>v</sup> OMB 2002 Report to Congress, at 70-84, lists rules, but no programs. In the legislation that asks for this report, unlike the legislation that asks for the 1997 and 1998 reports, Congress does not explicitly ask for recommendations on reforming programs.

<sup>vi</sup> "Before supportable recommendations are made to eliminate existing regulatory programs, or elements of programs, empirical evidence based on analytical techniques designed to solve the methodological problems discussed above must be developed." OMB 1997 Report to Congress, Chapter 4: Recommendations.

<sup>vii</sup> "...we do not believe we have enough information to make definitive recommendations on specific regulatory programs based on the incomplete and uneven data that we discuss at length above." OMB lists ten specific reform initiatives from the agencies that were published in The Regulatory Plan, which it endorses OMB 1998 Report to Congress, at 84.

<sup>viii</sup> Reform recommendation endorses select reform plans that the agencies published in the annual regulatory plan (64 FR 63883) but does not make original suggestions. See OMB 2000 Report to Congress.

<sup>ix</sup> OMB evaluated the public's reform suggestions and identified some suggestions as "high priority," which meant that [OMB was] inclined to agree and look into the suggestion. See OMB 2001 Report to Congress, at 62. High priority suggestions are listed in OMB 2001 Report to Congress, Table 7, at 63-64.

<sup>x</sup> OMB evaluated the public's reform suggestions and identified some suggestions as "high priority," opportunities for reform, and provided a status report on what was being done by agencies and OMB on these rules. See OMB 2002 Report to Congress, at 70-84.

<sup>xi</sup> The legislation requiring the 1997 and 1998 reports does not require an analysis of the impact of regulation on tribal governments: "an assessment of the direct and indirect impacts of Federal rules on the private sector, State and local government, and the Federal Government" OMB. Report to Congress on the Costs and Benefits of Federal Regulations. September 30, 1997 (§ Introduction). The 1997 report discusses indirect impacts but does not present an analysis of the impact on State and local governments: "This chapter also discusses the possible indirect effects of regulation on the economy as directed by Section 645(a)(3) and concludes that the effects are ambiguous theoretically, not well understood empirically, and at this time offer little content for making recommendations about regulatory policy (Chapter III);" also see Chapter II, §4.

<sup>xii</sup> See OMB 1998 Report to Congress, at 88, stating that electricity restructuring could yield benefits to State and local governments.

<sup>xiii</sup> See OMB 2000 Report to Congress, at 30, listing rules that have imposed costs of more than \$100 million on State, local, and Tribal governments.

<sup>xiv</sup> See OMB 2001 Report to Congress, at 14, listing rules that have imposed costs of more than \$100 million on State, local, and Tribal governments. Rules are discussed in more detail in Chapter III, p. 189.

<sup>xv</sup> OMB 2002 Report to Congress, at 41.

<sup>xvi</sup> The report states that information collection costs are included in other components of the aggregate costs that Table 2 presents, and only includes explicit estimates for information collection costs at independent agencies, which were not previously included. See OMB 1997 Report to Congress, Chapter II, §2.

<sup>xvii</sup> "Our estimate, based on burden-hour calculations for the independent regulatory agencies, e.g., SEC, FCC, FTC, reported in OMB's Information Collection Budget for FY 1998 (272 million hours) and Hopkins' opportunity costs of time estimate (\$26.50 per hour), is that disclosure costs are about \$7 billion." OMB 1998 Report to Congress, at 21.

<sup>xviii</sup> Expected Information Collection total hour burden for the entire government: 7,202.59 million hours. OMB 2000 Report to Congress, Table 6.

<sup>xix</sup> Expected Information Collection total hour burden for the entire government: 7,361.72 million hours OMB 2001 Report to Congress, Table 3.

<sup>xx</sup> Total hour burden for all federal agencies: 7651 million hours. See OMB 2002 Draft Report to Congress, Table 12, at 114: Summary of Active Information Collections Approved Under the Paperwork Reduction Act as of 09/30/2001.

<sup>xxi</sup> "OIRA has recently devised the public 'prompt letter' to permit us to suggest regulatory priorities to one or more agencies in a transparent manner." OMB 2001 Report to Congress, at 44.

<sup>xxii</sup> "OIRA is taking a proactive role in suggesting regulatory priorities for agency consideration. In order to play this role constructively, we have devised the 'prompt' letter as a modest device to bring a regulatory matter to the attention of agencies." (67 FR 15020), OMB 2002 Report to Congress, at 3.

<sup>xxiii</sup> "In our July 22, 1997, Notice published in the Federal Register, we asked for comments on all aspects of the draft report and stated that we were particularly interested in comments and suggestions pertaining to the following: ... Programs or program elements on which there is objective and verifiable information that would lead to a conclusion that such programs are inefficient or ineffective and should be eliminated or reformed." OMB 1997 Report to Congress.

<sup>xxiv</sup> Comments were solicited in the draft proposed report, not the final report. "Accordingly, OMB seeks comment on all aspects of the attached draft report, particularly comments and suggestions pertaining to the following: ... Programs or program elements on which there is objective and verifiable information that would lead to a conclusion that such programs are inefficient or ineffective and should be eliminated or reformed." 63 FR 44034.

<sup>xxv</sup> "In the draft report published May 2, 2001, we asked for suggestions from the public on specific regulations that could be rescinded or changed that would increase net benefits to the public by either reducing costs and/or increasing benefits." OMB 2001 Report to Congress, at 61.

<sup>xxvi</sup> Comments were solicited in the draft report: "OMB is calling for public nominations of regulatory reforms to specific existing regulations that, if adopted, would increase overall net benefits to the public, considering both qualitative and quantitative factors (67 FR 15033)." OMB 2001 Report to Congress, at 3.

<sup>xxvii</sup> OMB 2001 Report to Congress, at 3.

<sup>xxviii</sup> OMB 2002 Report to Congress, at 3. .

**Table 6: Regulatory Scorecard**

<u>Regulatory Impact Summary</u>	
<u>I. BACKGROUND ON RULE AND AGENCY</u>	
AGENCY AND DEPARTMENT/OFFICE NAME	
CONTACT PERSON	TELEPHONE NUMBER
TITLE OF THE RULE	
RIN NUMBER	DOCKET NUMBER
TYPE OF RULEMAKING (FINAL/INTERIM/PROPOSED/NOTICE)	TYPE OF RULE (REGULATORY/BUDGET IMPACT)
STATUTORY AUTHORITY FOR THE RULE	MAIN REASON FOR RULEMAKING
BRIEF DESCRIPTION OF THE RULE	
<u>II. OVERALL IMPACT</u>	
<p>1. Will the rule have an impact on the economy of \$100 million or more?      Yes    No</p> <p>2. Best estimate of the present value of quantifiable benefits of the rule.      \$ _____</p> <p>3. Best estimate of the present value of quantifiable costs of the rule.      \$ _____</p> <p>4. Do the quantifiable benefits exceed the quantifiable costs?      Yes    No</p> <p>5. Report the dollar year of costs and benefits. _____</p> <p>6. Report the discount rate used in the calculations for costs and benefits. _____</p> <p>    If more than one discount rate was used in calculations, please explain why.</p> <p>_____</p> <p>7. Discuss level of confidence in the benefit-cost estimates and key uncertainties. Include a range for costs and benefits. _____</p> <p>_____</p> <p>8. Identify benefits or costs that were not quantified. _____</p> <p>_____</p>	

### III. COSTS AND BENEFITS

#### Estimated Incremental Costs

1. Costs and breakdown of quantifiable costs by type.

	Annual	Years in Which Costs Occur	Present Value
Total Costs	_____	_____	_____
Compliance Costs	_____	_____	_____
Administrative Costs	_____	_____	_____
Federal Budget Costs	_____	_____	_____
Local/State Budget Costs	_____	_____	_____
Other Costs	_____	_____	_____

Notes: \_\_\_\_\_  
\_\_\_\_\_

2. Give a brief description of who will bear the costs. \_\_\_\_\_

#### Estimated Incremental Benefits

1. Benefits and breakdown of quantifiable benefits by type.

	Annual	Years in Which Benefits Occur	Present Value
Total Benefits	_____	_____	_____
Health Benefits	_____	_____	_____
Pollution Benefits	_____	_____	_____
Other Benefits	_____	_____	_____

Notes: \_\_\_\_\_

2. Give a brief description of who will benefit. \_\_\_\_\_

### IV. ALTERNATIVES TO THE REGULATION

1. List and briefly describe the alternatives to the rule that were considered and why they were rejected, including a summary of costs and benefits of those alternatives. If no alternatives were considered, explain why not.

\_\_\_\_\_  
\_\_\_\_\_

Source: Based on Table 4 in Robert W. Hahn and Cass R. Sunstein. 2002. "A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis." University of Pennsylvania Law Review 150: 1489, 1519.